

76-1107/940

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12			
13	STEPHANIE KIPPERMAN, etc.,)	
14)	No. C-75-1211-CBR
15	vs.)	REPLY BRIEF OF J. EDWARD DAY
16	JOHN A. McCONE, et al.,)	TO PLAINTIFF'S SUPPLEMENTARY
17)	AFFIDAVIT SUPPORTING OPPOSI-
18	Defendants.)	TION TO DISMISSAL

19 This brief is submitted on behalf of defendant J. Edward
20 Day ("Day") in reply to the affidavit executed by William A.
21 Brockett, attorney for plaintiff, entitled "Supplementary Affi-
22 davit Supporting Opposition to Dismissal" ("Brockett Affidavit").¹

23 The Brockett Affidavit was submitted with the permission
24 of the Court, granted presumably for the purpose of giving plain-
25 tiff another opportunity to present facts to support personal
26 jurisdiction over the individual defendants, including Day. The
27 Court is aware of the numerous opportunities given plaintiff in

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29 1 This brief deals exclusively with the issues of personal juris-
30 diction raised by the Brockett Affidavit. Plaintiff's arguments
31 with respect to 28 U.S.C. §1391(e) have been met in Day's prior
32 memoranda.

REPLY BRIEF OF J. EDWARD DAY TO
PLAINTIFF'S SUPPLEMENTARY AFFIDAVIT - 1

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1 the past year to support her bald, conclusory allegations that
2 defendant Day engaged in some wrong-doing in California. Suffice
3 it to say that, although plaintiff has imaginative theories, she
4 has consistently failed to present facts and has relied only on
5 conjecture and speculation.² This latest attempt is no exception.

6 The Brockett Affidavit paraphrases portions of the
7 transcript of the hearings before the Senate Select Committee
8 to Study Governmental Operations with Respect to Intelligence
9 Activities ("Select Committee") held in October 1975. The affi-
10 davit refers solely to a mail-opening program purportedly carried
11 on by the F.B.I. in San Francisco. The complaint, however, sets
12 forth no allegations as to a mail-intercept program carried on by
13 the F.B.I. and refers only to a mail-intercept program carried
14 on by the C.I.A. (Third Amended Complaint, ¶ 15).

15 Moreover, plaintiff alleges that her cause of action
16 and her nominal injury arise from the C.I.A.'s intercept of her
17 mail to or from the Soviet Union ("Soviet Mail"), not China or
18 other Far East Asian countries.³ The Brockett Affidavit does not

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21 2 Indeed, Day has not even been a consistent subject of plaintiff's
22 speculation. Originally, plaintiff made no claim against Day
23 (Complaint dated June 13, 1975).

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25 3. Third Amended Complaint, ¶¶ 17 and 20 of Count One, ¶ 2 of Count
26 Two, and ¶ 4 of Count Three. In the Third Amended Complaint,
27 plaintiff refers to the C.I.A. "West Coast intercept", but
28 clearly those activities had nothing to do with Day, or her
29 cause of action or her purported injury. See pp. 2-5, Supple-
30 mental Brief of Defendant J. Edward Day in Support of his Motion
31 to Dismiss, filed March 3, 1976.

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REPLY BRIEF OF J. EDWARD DAY TO
PLAINTIFF'S SUPPLEMENTARY AFFIDAVIT - 2

1 assert that the F.B.I.'s San Francisco mail program involved
 2 Soviet Mail, but the Court is urged to speculate that it did
 3 and that plaintiff's mail was intercepted in San Francisco by
 4 the F.B.I. However, it is clear from a reading of the Select
 5 Committee's final report, Book III, pp. 641-645, and the Affi-
 6 davit of Kenneth L. Adams, Esq. (attached as Appendices A and
 7 B to the "Response by Defendant Cotter to Plaintiff's Supplemen-
 8 tary Affidavit Supporting Opposition to Dismissal" filed herein
 9 on July 23, 1976) that the mail-intercept program carried on
 10 by the F.B.I. in San Francisco did not include the intercept
 11 of Soviet Mail but involved only mail to and from China and
 12 other Far East Asian countries.

13 Thus, the contentions contained in the Brockett Affi-
 14 davit do not support jurisdiction over Day in this action. The
 15 activities discussed therein did not give rise to her purported
 16 cause of action. Indeed, they do not even relate to the acts
 17 complained of by plaintiff. Moreover, the Brockett Affidavit
 18 does not link Day to any act occurring in California. In short,
 19 as in her repeated attempts over the past year to establish per-
 20 sonal jurisdiction, plaintiff has failed again to set forth evi-
 21 dentiary facts sufficient to establish the necessary "minimal
 22 contacts" to support personal jurisdiction over Day.⁴ To continue

23
 24 ⁴ *Hoffman v. Halden*, 268 F.2d 280, 295 (9th Cir., 1959), overruled
 25 on another point; *Cohen v. Norris*, 300 F.2d 24 (9th Cir., 1962);
 26 *Mandelkorn v. Patrick*, 359 F.Supp. 692, 694 (D.C.D.C., 1973);
 27 *Socialist Workers Party v. Attorney General*, 375 F.Supp. 318
 28 (S.D.N.Y., 1974). See also pp. 4-9, Brief in Support of the
 29 Motion of Defendant J. Edward Day to Dismiss the Amended Complaint
 30 (filed January 15, 1976); pp. 2-5, Reply Brief of Defendant J.
 31 Edward Day (filed February 4, 1976); and pp. 2-5, Supplemental
 32 Brief of Defendant J. Edward Day in Support of his Motion to
 Dismiss (filed March 3, 1976).

1 this action any longer as against Day, for discovery purposes
2 or otherwise, would violate Day's right to due process of the
3 law. Plaintiff, having failed to provide any facts relevant
4 to her claim that could establish jurisdiction over Day, now
5 casts about for any governmental action that may have occurred
6 in San Francisco, even though totally unrelated to her claim and
7 to Day. Day has a constitutional right to be free from the bur-
8 den of defending lawsuits where the "minimal contacts" require-
9 ments cannot be met.⁵

10
11 CONCLUSION

12 For the reasons set forth here and in Day's previous
13 memoranda, this action should be dismissed as to Day.

14 Respectfully submitted,

15 *Richard Ernst*

16 Richard Ernst
17 Counsel for Defendant
J. Edward Day

18 Donald J. Cohn
19 James V. Kearney
20 Webster & Sheffield
21 Of Counsel

22 Dated: July 23, 1976
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30 ⁵ *International Shoe Company v. State of Washington*, 326 U.S. 310,
31 316, 319 (1945); *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).
32 ---

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
City & County of San Francisco)

Kim Lacey, being first duly sworn,
deposes and says:

That I am a citizen of the United States, over the age of 18
and not a party to or interested in the within entitled cause; that my
business address is 635 Sacramento Street, San Francisco, California.

That I served by mail the following document:

REPLY BRIEF OF J. EDWARD DAY TO PLAINTIFF'S SUPPLEMENTARY
AFFIDAVIT SUPPORTING OPPOSITION TO DISMISSAL

in the following manner:

I enclosed a true copy of said document in an envelope
addressed as follows:

[See Exhibit A, attached]

I sealed said envelope and deposited it so sealed and
addressed on the 23rd day of July, 1976, with the
postage thereon fully prepaid, in a United States post office mail box
in the City and County of San Francisco, California.

KIM LACEY
Subscribed and sworn to before me
This 23rd day of July, 1976

DEBBIE GOR
Notary Public, in and for the State of
California, with principal office in the
City & County of San Francisco.

My commission expires

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EXHIBIT A

	UNCLASSIFIED		CONFIDENTIAL		SECRET
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EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	D/DCI/IC				
4	S/MC				
5	DDS&T				
6	DDI				
7	DDA				
8	DDO				
9	D/DCI/NIO				
10	GC	✓			
11	LC				
12	IG				
13	Compt				
14	D/Pers				
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16	DTR				
17	Asst/DCI				
18	AO/DCI				
19	C/IPS				
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		SUSPENSE _____ Date _____			

Remarks:

for appropriate action

ff/ Executive Secretary

27 JUL 1978

Date

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